

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X 1:17-cv-02914-DAB  
MAPLEWOOD AT UPPER EAST SIDE, LLC,

Plaintiff,

Hon. Deborah A. Batts

-against-

**ANSWER TO  
CROSS-CLAIMS**

MALA SENDYK, AS ADMINISTRATOR OF THE  
ESTATE OF BENJAMIN SENDYK, SHARON  
SENDYK AS ADMINISTRATOR OF THE ESTATE  
OF BENJAMIN SENDYK, CHICAGO TITLE  
INSURANCE COMPANY, as  
Escrow agent/stakeholder, INTERIORS BY  
B & H, INC. and 1808 2<sup>nd</sup> REALTY, LLC,

Defendants.

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SHARON SENDYK AS ADMINISTRATOR OF  
THE ESTATE OF BENJAMIN SENDYK,

Third-Party Plaintiff,

-against-

LEONARD RODNEY, ESQ. and LARRY GALLUS, CPA,

Third-Party Defendants.

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Third-Party Defendant Larry Gallus, CPA (“Gallus”), by and through his attorneys, Milber Makris Plousadis & Seiden, LLP, as and for his answer to Defendant Mala Sendyk, as Administrator of the Estate of Benjamin Sendyk’s (“Mala’s”) and Third-Party Defendant Leonard Rodney’ Esq.’s (“Rodney’s”) Cross-Claims (the “Cross-Claims”), alleges upon information and belief, as follows:

**AS AND FOR AN ANSWER TO THE FIRST CROSS-CLAIM**

1. Gallus denies each and every allegation set forth in Paragraph “31” of the First Cross-Claim.

2. Gallus denies each and every allegation set forth in Paragraph “32” of the First Cross-Claim.

**AS AND FOR AN ANSWER TO THE SECOND CROSS-CLAIM**

3. Gallus repeats, reiterates and realleges each and every allegation set forth in paragraphs “1” and “2” above as if more fully set forth at length herein.

4. Gallus denies each and every allegation set forth in Paragraph “34” of the Second Cross-Claim.

5. Gallus denies each and every allegation set forth in Paragraph “35” of the Second Cross-Claim.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

6. The Cross-Claims fail to state a claim upon which relief can be granted against Gallus.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

7. Any and all damages allegedly sustained by Mala and Rodney as alleged in the Cross-Claims were caused in whole or in part by the culpable conduct, negligence or lack of care on the part of Mala and/or Rodney, their agents, assigns, employees, attorneys, or others acting on their behalf.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

8. Any and all damages allegedly sustained by Mala and Rodney were due in whole or in part to the culpable conduct of parties other than Gallus and over whom Gallus exercised no control and/or supervision.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

9. The liability of Gallus, if any, to Mala and Rodney is limited to Gallus' equitable share to be determined in accordance with the relative culpability of all parties contributing to the losses sustained.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

10. Gallus did not violate any duty owed to Mala and Rodney under common law, statute, regulations or standards.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

11. The Cross-Claims are barred, in whole or in part, by the doctrines of waiver, laches, estoppel, unclean hands and avoidable consequences.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

12. Mala's and Rodney's damages, if any, were sustained as a result of intervening superseding causes, which were out of the control of Gallus and not the result of the conduct, acts or omissions of Gallus. By virtue of said intervening superseding causes, Mala's and Rodney's damages were not proximately caused by Gallus, and, therefore, all causes of action, Cross-Claims and claims against Gallus should be dismissed.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

13. The allegations and claims set forth in the Cross-Claims are premature and not ripe for adjudication.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

14. Mala and Rodney have failed to sustain and/or cannot demonstrate actual and ascertainable damages as set forth in the Cross-Claims.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

15. Gallus' actions and/or strategic decisions were reasonable and met the applicable standard(s) of care.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

16. The Cross-Claims are barred since any damages alleged in the Cross-Claims were caused by the failures of Mala and/or Rodney to exercise reasonable and ordinary care, caution and vigilance.

**AS AND FOR A TWELTH AFFIRMATIVE DEFENSE**

17. The Cross-Claims are barred as a result of Mala's and Rodney's failure to mitigate damages, if any.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

18. The damages alleged in the Cross-Claims, if any, are barred and/or limited by the doctrines of comparative and/or contributory negligence.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

19. Gallus was not the proximate or actual cause of the damages claimed in the Cross-Claims.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

20. Gallus breached no duty to Mala and/or Rodney, and, as such, is not liable for any damages.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

21. Gallus complied fully with all applicable standards of care with respect to the matters alleged in the Cross-Claims.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

22. Gallus is not in any way liable, either directly or vicariously, for the actions of any other persons or entities that may have caused or contributed to the damages alleged in the Cross-Claims.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE**

23. The Cross-Claims are barred and/or limited by the statutes, codes and other provisions upon which the pleading is based.

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE**

24. Gallus bears no legal responsibility for the actions of Mala and/or Rodney and/or non-parties as alleged in the Cross-Claims, which were unforeseeable and which actions were the proximate cause of any damages as alleged in the Cross-Claims, and, as such, all causes of actions asserted and remaining against Gallus in the Cross-Claims are barred.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

25. All risks and dangers of loss or damages connected with the transaction(s) alleged in the Complaint were, at the time and place mentioned, open, obvious and apparent, and were known by Mala and/or Rodney, and, as such, all such risks, dangers of loss, or damages were voluntarily assumed by Mala and/or Rodney.

**AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE**

26. The Cross-Claims claims are barred by the doctrine of accounting interference.

**AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE**

27. The Cross-Claims are barred by their failure to join necessary and indispensable parties without whom this action cannot proceed.

**AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE**

28. The claims alleged in the Cross-Claims are barred by the loss causation doctrine.

**AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE**

29. The claims alleged in the Cross-Claims are barred based upon the doctrine of *in pari delicto*.

**AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE**

30. If Mala and/or Rodney sustained damages as alleged in the Cross-Claims, all of which are denied, then such damages were caused in whole or in part by the culpable conduct of Mala and/or Rodney and the amount of damages otherwise recoverable, if any, shall be diminished by such degree of culpable conduct as is attributable to Mala and/or Rodney.

**AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE**

31. If Mala and/or Rodney sustained damages as alleged in the Cross-Claims, other than by reason of its own culpable conduct, then such damages were caused in whole or in part by the culpable conduct of some third person or persons or entity or entities over whom Gallus had no supervision or control, or over whom Gallus had no duty of supervision or control.

**AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

32. The negligence of those responsible for the incident(s) and/or the occurrence(s) alleged in the Cross-Claims constitutes separate, independent, superseding, intervening culpable acts/omissions, which constitutes the sole proximate cause of Mala's and/or Rodney's alleged damages.

**AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

33. This Court lacks jurisdiction over the subject matter of this action as to Gallus.

**AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE**

34. Gallus did not make any material misrepresentations or omissions of facts as alleged in the Cross-Claims and, as such, all causes of action asserted and remaining in the Cross-Claims setting forth the same are barred.

**AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE**

35. The claims alleged in the Cross-Claims are barred pursuant to the imputation doctrine.

**AS AND FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE**

36. The Cross-Claims are barred by the doctrine of ratification.

**AS AND FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE**

37. Gallus generally denies liability in this action and states that he is not indebted to Mala and/or Rodney as alleged in the Cross-Claims.

**AS AND FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE**

38. The Cross-Claims are barred in whole or in part by the doctrines of set-off and/or recoupment.

**AS AND FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE**

39. Gallus hereby expressly incorporates by reference each and every applicable and relevant separate defense contained in the answers of any and all other defendants and third-party defendants and those who may later be added or joined in this action.

**AS AND FOR A THIRTY-FIFTH AFFIRMATIVE DEFENSE**

40. Gallus reserves the right to raise such other and further affirmative defenses as may be uncovered during the course of this action up to and including at the time of trial.

**AS AND FOR A THIRTY-SIXTH AFFIRMATIVE DEFENSE**

41. Insofar as the Cross-Claims seek damages against Gallus, the Cross-Claims must be dismissed because Mala and/or Rodney has not sustained any damages.

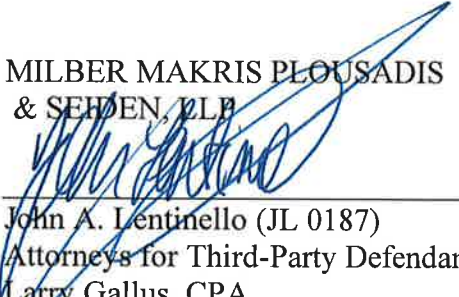
**AS AND FOR A THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

42. Gallus states that there exists a defense to the causes of action asserted in the Cross-Claims which is founded upon documentary evidence.

WHEREFORE, Gallus demands judgment:

- (A) Dismissing the Cross-Claims;
- (B) Awarding Gallus the costs and disbursement of this action, including attorneys' and investigative fees; and
- (C) Awarding Gallus such other and further relief as this Court may deem just and proper.

Dated: Woodbury, New York  
October 28, 2019

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